



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 18, 1997

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11th Street  
Austin, Texas 78701-2483

OR97-0366

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103329.

The Texas Department of Transportation (the "department") received a request for a list of deficient bridges in Dallas County and inspection reports about those bridges.<sup>1</sup> You have submitted samples of the requested information to this office for review.<sup>2</sup> You claim that the information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that federal law prohibits release of the requested information. Section 409 of title 23 of the United States Code provides:

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled for the purpose of identifying[,] evaluating, or planning the safety enhancement of potential accident

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<sup>1</sup>We note that the requestor initially sought information about deficient bridges in Texas. However, after consulting with the department's public information officer, the requestor amended her request and now seeks information about bridges in Dallas County only.

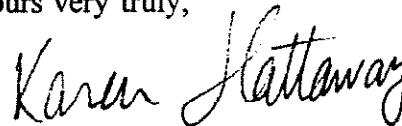
<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 152 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

You argue that "[i]t would certainly seem a circumvention of that federal statute to allow compulsory production of that information by invoking the Texas Public Information Act." However, chapter 552 of the Government Code differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Attorney General Opinion JM-1048 (1989); *see* Open Records Decision No. 575 (1990) (section 552.101 does not encompass discovery privileges); Gov't Code § 552.006 (chapter 552 does not authorize withholding public information or limit availability of public information to public except as expressly provided by chapter 552). The statute on which the department relies regulates discovery in court proceedings and not the availability of information under chapter 552 of the Government Code.<sup>3</sup> Therefore, the department may not withhold the requested information from disclosure under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

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Ref: ID# 103329

Enclosures: Submitted documents

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<sup>3</sup>We note that at least one court decision implicitly recognizes that the information encompassed by this federal statute may be used by a newspaper in an article about the hazardousness of a particular railroad crossing. *See Robertson v. Union Pac. R.R.*, 954 F.2d 1433, 1435 (8th Cir. 1992).

cc: Ms. Diane Jennings  
The Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)